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SUBJECT: SOUTH AFRICA: DRAFT BEE CODE 600: ENTERPRISE  
DEVELOPMENT

REF: (A) PRETORIA 05 4854  
(B) PRETORIA 05 4855  
(C) PRETORIA 05 4856  
(D) PRETORIA 06 337  
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(F) PRETORIA 06 646  
(G) PRETORIA 06 700

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[¶1.](#) (U) Summary. The South African Department of Trade and Industry (DTI) released for public comment drafts of Broad-based Black Economic Empowerment (BEE) Codes of Good Practice belonging to the second and final phase on December 20, 2005. The Minister of Trade and Industry plans to promulgate both the first (which have been finalized) and the second phases of the BEE Codes of Good Practice before the end of 2006. Included in the second phase is Code 600. This code accounts for 10% of the BEE scorecard and sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to enterprise development. In each instance, the actual number of points awarded is calculated by multiplying the fraction of a compliance target (Code 600 has two) achieved by the number of possible points allotted for each target. In a recent meeting of their BEE Committee, members of the local American Chamber of Commerce voiced a number of concerns about this draft code. Comments on all BEE Codes of Good Practice belonging to the second phase must be submitted to DTI by March 31, 2006. End Summary.

[¶2.](#) (U) On December 20 2005, the South African Department of Trade and Industry (DTI) released for public comment drafts of BEE Codes of Good Practice belonging to the second and final phase. Comments on these draft codes must be submitted to DTI by March 31, 2006. While the BEE Codes of Good Practice belonging to the first phase have been finalized (Refs A, B, and C), the Minister of Trade and Industry will not promulgate them until the codes belonging to the second phase have also been finalized. DTI wants this to occur before the end of [¶2006](#).

[¶3.](#) (U) Codes belonging to the second phase deal with

employment equity (Code 300), skills development (Code 400), preferential procurement (Code 500), enterprise development (Code 600), residual contributions (Code 700), and small and medium sized enterprises (code 1000 - 1700). Also included in the second phase are subsections to Codes 000 (the BEE Framework for Measurement) and 100 (BEE Equity). The two subsections for Code 000 deal with misrepresenting BEE status (Statement 001) as well as and verification issues relating to complex structures (Statement 002). The four subsections for Code 100 deal with guidelines for the recognition of BEE ownership by BEE targeted warehouse funds (Statement 102), multinational companies (Statement 103), public entities and organs of the state (Statement 104), and companies limited by guarantee and Section 21 (i.e. nonprofit) companies (Statement 105). All may be sourced from DTI's website: [www.thedti.gov.za](http://www.thedti.gov.za).

14. (U) This cable focuses on Code 600, which sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to enterprise development. Septel and reftels report on the other codes.

CODE 600

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15. (U) Draft Code 600 establishes two compliance targets for BEE enterprise development along with one bonus target. The idea behind BEE enterprise development is to expand the financial and/or operational capacity of BEE firms. Such firms fall into three categories: micro

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enterprises, black owned firms, and firms that score more than 74 points on the BEE scorecard.

16. (U) Total points for achieving the two compliance targets under draft Code 600 account for 10% of the BEE scorecard. In each instance, the actual number of points awarded is calculated by multiplying the fraction of a compliance target achieved by the number of possible points allotted for each target. Excess scoring for exceeding any Code 600 targets is not possible. However, firms may score a bonus point. For a complete understanding as to how this portion of the generic scorecard is factored into the rest of the scorecard, please refer to Ref A.

17. (U) As set forth in draft Code 600, a firm can score six points if it spends 2% of its earnings before income tax, depreciation, and amortization (EBITDA) on a "non-recoverable contribution" towards the development of a "beneficiary entity" (as defined in Paragraphs 14 and 16). A firm can score four points if it contributes 3% of its EBITDA as a "recoverable contribution" (as defined in Paragraph 13) towards the development of a "beneficiary entity". A firm may score a bonus point if it creates at least one job per year by contributing to BEE enterprise development. Firms would be measured annually and not allowed to carry forward a bonus point from one year to the next.

18. (U) The following contributions towards enterprise development would qualify for recognition at a multiple of 1.5:

- contributions that create employment opportunities in rural communities or areas the government identifies as belong to rural development and urban renewal programs;
- contributions that assist and accelerate the development of firms which manufacture, produce, or sell goods and/or services not previously produced in

South Africa.

Similarly, the following contributions towards enterprise development would qualify for recognition at a multiple of 1.25:

- monetary and non-monetary contributions that assist and accelerate the development of micro enterprises;
- monetary contributions to the funding of warehousing funds.

¶9. (U) The following table lists criteria, points, and targets for deriving an enterprise development score:

Criteria	Points	Target
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		% of EBITDA
Non-Recoverable Contribution	6	2%
Recoverable Contribution	4	3%
Bonus point	1	1 Job

#### CONCERNS

¶10. (SBU) On February 8, members of the BEE Committee at the local American Chamber of Commerce met to discuss draft Code 600. Members felt that the targets of 2% for non-recoverable contributions and 3% for recoverable contributions were onerous. They wanted clarity on whether they could claim points for enterprise development and purchasing from BEE suppliers who had benefited from enterprise development. Members suggested that the cost of time spent on enterprise development be calculated as a fixed cost, as it might

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be inappropriate to disclose individual salaries. In a subsequent BEE Committee meeting on February 15, DTI Director for BEE Jeffrey Ndumo clarified that a firm would score a bonus point even if it created just one job. Members thought this needed to be clearly stated within the text of the code.

#### Pertinent Definitions

¶11. (U) Code 000 defines "black" as black, coloured," and Indian South Africa citizens (or those who could have applied for South African citizenship, if permitted) who suffered or whose descendants suffered discrimination under the apartheid regime.

¶12. (U) "EBITDA" or earnings before income tax, depreciation, and amortization should be interpreted in accordance with South African Generally Accepted Accounting Practice.

¶13. (U) A "recoverable contribution" includes investments, loans, guarantees, or any monetary contribution that has to be repaid or returned to the firm.

¶14. (U) A "non-recoverable contribution" includes grants, donations, discounts, and other similar quantifiable benefits which are not recoverable by the firm.

15.(U) "Small enterprise" is defined as employing fewer than 50 employees and, depending on the sector in which it operates, an annual turnover of less than R25 million.

¶16. (U) A "beneficiary entity" includes the following type of firms:

- Any micro enterprise, defined as having a turnover Of less than R300 000.
- A firm in which in excess of 50% is owned by black people and which is a Level One to Level Six contributor to BEE. For a clear understanding as to how a firm's "BEE Status" is determined, please refer to Ref A.
- A firm which is a level One to Three BEE contributor to BEE, regardless of the black ownership status of the firm.
- A small enterprise in which in excess of 50% is owned by black people and which is a Level One to Level Six contributors to BEE.
- A small enterprise which is a Level One to Level Three BEE contributor to BEE regardless of the black ownership status of the small enterprise

¶17. (U) "Enterprise development contributions" may be recoverable or non-recoverable (as defined in Paragraphs 13 and 14) initiated and implemented in favor of a "beneficiary entity" (as defined in Paragraph 16) by a measured firm to assist in the development and the expansion of the financial and/or operational capacity of the beneficiary entity.

TEITELBAUM